

1 Mary Frudden
Nevada State Bar No. 3973
2 Jon E. Frudden
1902 Carter Dr.
3 Reno, NV 89509
775-324-7078
4

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
JAN 03 2012	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

5 *Pro Se* On Behalf of Themselves and their Minor Children

6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 MARY FRUDDEN, et al.

Case No. 3:11-cv-00474-RCJ-VPC

11 Plaintiffs,

12 v.


PLAINTIFFS' REPLY TO DEFENDANTS'
OPPOSITION AND OBJECTIONS TO PLAINTIFFS'
REQUEST TO TAKE JUDICIAL NOTICE

13 KAYANN PILLING, et al.

14 / Oral Arguments set for January 17, 2012

15 Plaintiffs, MARY FRUDDEN and JON E. FRUDDEN, individually and as parents and
16 guardians of their minor children JOHN and JANE DOE, hereby file their Reply to Defendants'
17 Opposition and Objections to Plaintiffs' Motion to Take Judicial Notice. This Reply is made and
18 based upon the Memorandum of Points and Authorities attached hereto, the documents on file
19 herein, and any other matter the Court deems necessary and pertinent to this Reply and underlying
20 Motion.

21 DATED: January 3, 2012.

22 By: 
MARY FRUDDEN, ESQ.
23 Nevada State Bar No. 3973
and JON E. FRUDDEN
24 *Pro Se*
1902 Carter Dr.
25 Reno, NV 89501
Telephone: 775-324-7078
26 maryfrudden@sbcglobal.net

27 On Behalf of Themselves and their Minor Children
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants oppose and object to the Court's taking judicial notice of the adjudicative facts requested by Plaintiffs because:

- (1) The holding in *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *cert. denied* 512 U.S. 1219 (1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)) prevents Plaintiffs from seeking judicial notice of certain documents;
- (2) Certain adjudicative facts requested to be judicially noticed under Plaintiffs' JNM, Section II.C are already alleged in Plaintiffs' FAC and thus taking judicial notice is "superfluous and unnecessary;"
- (3) Plaintiffs' Motion constitutes an improper sur-reply and should therefore be disregarded or stricken;
- (4) The facts requested to be noticed under Plaintiffs' JNM, Sections II.A, B and D are not properly subject to judicial notice because they are legislative facts and not adjudicative facts; and
- (5) The authorities cited by Plaintiffs are inapposite.

Plaintiffs address these contentions below.

II. ANALYSIS

A. THE HOLDING IN BRANCH DOES NOT PRECLUDE PLAINTIFFS' JNM

Defendants first attack Plaintiffs' JNM apparently contending that the Ninth Circuit's holding in *Branch v. Tunnell*, 14 F.3d 449 (9th Cir. 1994), *cert. denied* 512 U.S. 1219 (1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) prevents Plaintiffs from attaching documentary evidence to their JNM. Opposition, 3:22-5:2. Although it is true that *Branch* concerned matters on which defendant sought judicial notice, the Court did not limit its holding to such circumstances. In fact, the express holding was far more expansive: "[w]e hold that documents whose contents are alleged in a complaint and whose

1 authenticity no party questions, but which are not physically attached to the pleading, may be
 2 considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Id.* at 454. Nothing in the holding
 3 either expressly or implicitly limits its application to documents sought to be noticed by a
 4 defendant.

5 Plaintiffs request the Court to take judicial notice of the Written Uniform Policy, the Roy
 6 Gomm Elementary School uniform shirt, the banners on the fences at Roy Gomm, emails from
 7 Defendant Pilling to Plaintiff Mary Frudden, Mary Frudden’s June 6, 2011 letter to the Washoe
 8 County School District Board of Trustees, and Defendant Rauh’s June 28, 2011 letter to Mary
 9 Frudden, all of which are referred to and whose contents are alleged in Plaintiffs’ FAC.

10 Defendants’ limited interpretation of *Branch* should not be applied in this instance in order
 11 to bar Plaintiffs’ JNM. Furthermore, since Defendants did not dispute the authenticity of any of
 12 the materials attached to Plaintiffs’ JNM, Opposition to JNM (no dispute as to authenticity),
 13 Plaintiffs’ Motion should be granted.

14 **B. PLAINTIFFS’ JNM IS NOT SUPERFLUOUS, UNNECESSARY, OR A**
 15 **WASTE OF THE COURT’S TIME**

16 Defendants’ second contention of superfluosity and necessity is also without merit. In
 17 a civil case, a judicially noticed fact is conclusive. Fed.R.Evid. 201(f). Moreover, the language of
 18 Fed.R.Evid. 201(c)(2) makes clear that judicial notice is mandatory under certain circumstances.
 19 A court “must take judicial notice if a party requests it and the court is supplied with the
 20 necessary information.” Fed.R.Evid. 201(c)(2)¹; *Lyon v. Gila River Indian Cmty.*, 626 F.3d
 21 1059, 1075 (9th Cir. 2010)(Judicial notice “must be taken when a party requests it and supplies all
 22 necessary information”). The “necessary information” criteria is satisfied when the party
 23 requesting judicial notice identifies the adjudicative facts requested to be judicially noticed and
 24

25 ¹ The Rule was amended effective December 1, 2011 changing the word “shall” to
 26 “must” in an effort “to make them more easily understood and to make style and terminology
 27 consistent throughout the rules. These changes are intended to be stylistic only. There is no intent
 28 to change any result in any ruling on evidence admissibility.” Committee Notes on Rules--2011
 Amendment. “Use of the word ‘shall’ generally indicates a mandatory intent unless a convincing
 argument to the contrary is made.” *Jones v. Shalala*, 5 F.3d 447, 451 (9th Cir.1993) (quoting
City of Edmonds v. United States Dep’t of Labor, 749 F.2d 1419, 1421 (9th Cir.1984)).

1 provides the documentary or other evidence to be judicially noticed. *See J&j Sports Prod.s Inc v.*
 2 *Arrizon*, C 09-05118 WHA, Order Denying Plaintiff's Request to Take Judicial Notice of
 3 Settlement, (N.D. Cal., 2011)(Copy of the parties' settlement was not attached to request and
 4 thus court was not "supplied with the necessary information."); *Papai v. Harbor Tug and Barge*
 5 *Co.*, 67 F.3d 203, 207 n. 5 (9th Cir. 1995)(copy of the document to be judicially noticed was
 6 supplied and the party opposing judicial notice did not dispute the document was a true and
 7 correct copy).

8 Here, by way of their JNM, Plaintiffs provided the Court with the "necessary information"
 9 because the documents and materials to be judicially noticed were attached to Plaintiffs' JNM and
 10 the requested adjudicative facts were identified.

11 Where the requirements of Fed.R.Evid. 201 have been met, the judicially noticed fact is
 12 conclusive and, at the time of trial, the jury must be so instructed. Fed.R.Evid. 201(f). Thus,
 13 even if facts alleged in Plaintiffs' FAC are "deemed true" for purposes of a motion to dismiss
 14 under Fed.R.Civ.P. 12(b)(6), Plaintiffs are nevertheless entitled to mandatory judicial notice (and
 15 the corresponding finding of conclusiveness). It simply cannot be held that a conclusively
 16 established adjudicative fact is superfluous or unnecessary. Defendants, in essence, acknowledge
 17 the inconsistency of their argument when they implore the Court to refrain from taking judicial
 18 notice as requested by Plaintiffs because "[s]uch conclusiveness at this very early stage . . . would
 19 be inappropriate and contrary to the important policies underlying Fed.R.Civ.P. 1." Opposition,
 20 11:13-20. On the contrary, judicial notice as requested by Plaintiffs would promote the just,
 21 speedy, and inexpensive determination of this action, as it would eliminate the necessity of
 22 proving matters which are indisputable and thereby wasting the Court's and the parties' time.

23 **C. PLAINTIFFS' JNM FALLS SQUARELY WITHIN THE CONFINES OF**
 24 **Fed.R.Evid. 201**

25 Defendants assert that Plaintiffs' JNM is "essentially, and in reality, nothing but a second
 26 opposition." Defendants' Opposition to JNM, 5:24. Defendants' argument, Opposition, 6:1-7:5²

27
 28 ² Defendants claim they "simply addressed the matters in Plaintiffs' Opposition, and
 did not bring up any new matters in their Reply." Opposition to JNM, 7:5, n. 2. This is incorrect.

1 is unpersuasive for several reasons.

2 First, Plaintiffs' JNM does not reargue any matter raised in their Opposition to
3 Defendants' Motion to Dismiss. Plaintiffs' JNM is limited to the those points and authorities
4 relevant to taking judicial notice pursuant to Fed.R.Evid. 201, which expressly permits a party to
5 request the Court to take judicial notice of adjudicative facts, and which, unlike the filing of a sur-
6 reply, does not require leave of court. Fed.R.Evid. 201.

7 Second, there is no timing requirement on a motion to take judicial notice. In fact, the
8 court is permitted to take judicial notice "at any stage of the proceeding." Fed.R.Evid. 201(d).
9 Procedural fairness requires only that a party be given an opportunity to be heard on the propriety
10 of taking judicial notice and the tenor of the matter noticed. Fed.R.Evid. 201, Notes of Advisory
11 Committee on Proposed Rules, [former] subdivision (e).

12 Defendants have been afforded the requisite procedural fairness. Plaintiffs' FAC makes
13 reference to the documents attached to Plaintiffs' JNM with which Defendants were undeniably
14 served. Defendants had sufficient opportunity to and did oppose Plaintiffs' JNM. Finally, the
15 Court has set oral arguments on Plaintiffs' JNM as well as Defendants' Motion to Dismiss. Thus,
16 even if the Court determines that Plaintiffs' JNM is a "second opposition," striking or
17 disregarding it is unwarranted because Defendants have been afforded adequate opportunity to
18 respond and have not asserted they have been prejudiced in any way.

19 Third, the Court can take judicial notice of adjudicative facts on its own. Fed.R.Evid.
20 201(c)(1). And, when ruling on a Rule 12(b)(6) motion to dismiss, Courts must generally

21
22 While Defendants' Motion to Dismiss does not contend Plaintiffs' lawsuit is frivolous,
23 Defendants' Reply, repeatedly makes such an assertion. *See e.g.*, Reply at 2:19-20 ("Instead, this
24 case is being driven by a disgruntled parent, Mary Frudden, who is clogging the federal courts
25 with nothing more than a frivolous lawsuit."); at 7:11-15 ("A court may dismiss a claim as
26 frivolous when it lacks an arguable basis either in law or fact. [Citation]. This [Third] claim
27 satisfies that criterion, so it should be dismissed."). Issues raised for the first time in a reply brief
28 are not ordinarily considered by the Court. *United States v. Boyce*, 148 F.Supp.2d 1069, 1085
(S.D.Cal.2001); *United States v. Bohn*, 956 F.2d 208, 209 (9th Cir.1992) (noting that courts
generally decline to consider arguments raised for the first time in a reply brief); *United States v.*
Boggi, 74 F.3d 470, 478 (3d Cir.1996) (noting that considering arguments raised for first time in
reply brief deprives opposing party of adequate opportunity to respond).

1 consider the complaint in its entirety, as well as other sources courts ordinarily examine when
 2 ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the
 3 complaint by reference, and matters of which a court may take judicial notice. *See* 5B Wright &
 4 Miller §1357 (3d ed. 2004 and Supp. 2007); *see also*, *Tellabs, Inc. v. Makor Issues & Rights,*
 5 *Ltd.*, 127 S. Ct. 2499 (2007).

6 Where, as here, the Court can and should consider the matters requested by Plaintiffs in
 7 their JNM, it would be a waste of resources and unnecessarily delay the resolution of this action
 8 to strike or disregard them. Cf. Fed.R.Civ.P. 1 (The Federal Rules of Civil Procedure “should be
 9 construed and administered to secure the just, speedy, and inexpensive determination of every
 10 action and proceeding.”); *Dayton Valley Investors v. Union Pacific R. Co.*, 664 F.Supp.2d 1174
 11 (D. Nev., 2009)(Where a court determines that it would be more efficient—not just for the parties
 12 but particularly for the court—to consider a belated motion for summary judgment rather than
 13 strike it, the Rule 16 “good cause” requirement does not stand in the way).

14 **D. PLAINTIFFS’ JNM SEEKS JUDICIAL NOTICE OF ADJUDICATIVE** 15 **FACTS**

16 Defendants contend Plaintiffs’ JNM, sections II.A, II.B and II.D. involve requests to take
 17 judicial notice of legislative facts which are outside the scope of Fed.R.Evid. 201. Opposition,
 18 3:15-18; 10:6-12. An adjudicative fact is a fact “concerning the immediate parties--who did what,
 19 where, when, how, and with what motive or intent.” Fed.R.Evid. 201(a), Advisory Committee's
 20 Note. “Legislative facts, on the other hand, are those which have relevance to legal reasoning and
 21 the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or
 22 court or in the enactment of a legislative body.” *Id.*

23 Plaintiffs request the Court to take judicial notice of the Written Uniform Policy, the
 24 school board minutes and the Washoe County School District Parent Student Handbook.
 25 Defendants object to judicial notice of these documents, arguing to do so would be the equivalent
 26 of taking judicial notice of the law. Opposition, 9:16-10:13.

27 **1. Written Uniform Policy.**

28 Plaintiffs request judicial notice of the Written Uniform Policy in order to establish the

1 adjudicative fact the Written Uniform Policy contains the statement “The main purpose of the Roy
2 Gomm School Uniform Policy is to establish a culture of ‘one team, one community’ at Roy
3 Gomm Elementary School.” The contents of the Written Uniform Policy are referred to in
4 Plaintiffs’ FAC and the Written Uniform Policy is a public document published on the Washoe
5 County School District’s website for Roy Gomm. It is not subject to reasonable dispute, and the
6 Defendants do not dispute the Written Uniform Policy contains the statement regarding the main
7 purpose of the Uniform Policy. The statement is quoted *verbatim* from the Written Uniform
8 Policy itself and is not “slanted” in Plaintiffs’ favor. The fact requested to be judicially noticed
9 provides the “motive and intent” for implementing the Written Uniform Policy. As such, it can be
10 judicially noticed as an adjudicative fact.

11 Similarly, Plaintiffs request judicial notice of the Written Uniform Policy in order to
12 establish the adjudicative fact the Written Uniform Policy contains the exemption specified in
13 Plaintiffs’ JNM at section II.C.1.b. Again, this is not subject to reasonable dispute, and the
14 Defendants do not dispute the Written Uniform Policy contains the stated exemption. The
15 exemption is quoted *verbatim* from the Written Uniform Policy itself and is not “slanted” in
16 Plaintiffs’ favor. The fact requested to be judicially noticed provides the “motive and intent” to
17 provide an exemption and the “what, where, when, and how” the exemption will apply. As such,
18 it can be judicially noticed as an adjudicative fact.

19 Finally, judicial notice of the Written Uniform Policy in order to establish the adjudicative
20 fact the Written Uniform Policy contains a sequential progressive disciplinary plan against a
21 student who is insubordinate. This fact is not subject to reasonable dispute, and the Defendants
22 do not dispute the Written Uniform Policy contains such a disciplinary plan. Plaintiffs have not
23 slanted this fact in their favor. The fact requested to be judicially noticed provides the “what,
24 where, when, and how” disciplinary action will be taken against an insubordinate student. As
25 such, it can be judicially noticed as an adjudicative fact.

26 **2. The Minutes of the Washoe County School District Board of Trustees’**
27 **Meetings.**

28 By way of their JNM, Plaintiffs do not ask the Court to take judicial notice of the Board’s

1 meeting minutes in order to establish what the Board of Trustees *did* in adopting a policy, rather,
2 Plaintiffs seek to establish as an adjudicative fact the Board of Trustees did *not* taken certain steps
3 before Roy Gomm implemented the Written Uniform Policy. JNM, 5:12-23. It is not disputed
4 the minutes of the Board's public meetings are public records published on the Washoe County
5 School District's website.

6 In *Harris v. Bd. of Supervisors of La. State Univ.*, No. 09-31126, p. 4 n. 2 (5th. Cir.
7 December 8, 2010)(unpublished disposition), the Fifth Circuit took judicial notice pursuant to
8 Fed.R.Evid. 201(b) of Louisiana State University's board of supervisors' website and meeting
9 minutes to establish the adjudicative fact the judge was not a member of the board of supervisors
10 when he presided over the case and was therefore not subject to disqualification. Though not
11 binding authority, the Court can look to *Harris* in determining whether judicial notice may be
12 taken of meeting minutes of the board of a public institution, like WCSD's Board of Trustees.

13 Notably, Defendants do not dispute the meeting minutes provide support for the
14 adjudicative facts asserted in section II.C.2.a-d. Nor do they cite to meeting minutes which would
15 refute the facts for which Plaintiffs seek judicial notice. Rather, Defendants criticize Plaintiffs'
16 citation to the Washoe County School District Board of Trustees meeting minutes archive
17 claiming the citation indicates Plaintiffs want only "*their slant*" on the facts to be established.
18 Opposition, 8:9-10 [emphasis in Opposition]; 9:1-3. It is difficult to understand how Plaintiffs
19 can be expected to provide a more specific citation to the board's meeting minutes to establish the
20 adjudicative fact *no action* was taken to comply with NRS 386.365 and 392.458 (for example,
21 that there was no notice at least 15 days in advance before Roy Gomm implemented the Written
22 Uniform Policy or that no policy has been established by the board of trustees that requires pupils
23 to wear school uniforms). Defendants themselves employ the same practice when they cite to the
24 "Court Record (no such motion)" in support of their assertion that Plaintiffs did not seek leave to
25 file a sur-reply. See Opposition, 7:1-2.

26 Defendants also contend that the facts requested by Plaintiffs in JNM, II.C.2.b. and
27 II.C.2.c. are "*at odds with*" another adjudicative fact for which the Plaintiffs request judicial notice
28 at JNM, II.C.7.b. They are incorrect. It is entirely consistent to establish that the Board of

1 Trustees “considered” the matters voiced in Mary Frudden’s letter of June 6, 2011 but that not
 2 *all* persons interested in the Written Uniform Policy were afforded a reasonable opportunity to
 3 submit data, views and arguments, orally or in writing to the Board of Trustees and that the board
 4 of trustees did not consider *all* written and oral submissions respecting the proposal or change
 5 before taking final action on the Written Uniform Policy [because no notice was provided as
 6 stated in II.C.2.a].

7 **3. The Washoe County School District Parent Student Handbook.**

8 Plaintiffs request judicial notice of this public record in order to establish adjudicative facts
 9 regarding statements contained in the Handbook. JNM, 5:24-6:9. Like the Written Uniform
 10 Policy, the contents of the Handbook are referred to in Plaintiffs’ FAC and it is a public document
 11 published on the Washoe County School District’s website. It is not subject to reasonable
 12 dispute, and the Defendants do not dispute the Handbook contains the statements sought to be
 13 judicially noticed. The statements are taken directly from the Handbook itself and are not
 14 “slanted” in Plaintiffs’ favor. The facts requested to be judicially noticed establish where, when
 15 and how students’ dress can be limited and the motive and intent for limiting student dress. As
 16 such, the Handbook can be judicially noticed to establish these adjudicative facts.

17 **4. The Definition of *Ultra Vires*.**

18 Plaintiffs withdraw their request regarding judicial notice of the definition of *ultra vires*.

19 **5. The Websites of US Soccer and AYSO.**

20 Contrary to Defendants’ assertion, Plaintiffs do not ask the Court to take judicial notice of
 21 36 U.S.C. § 220512 *et seq.* Opposition, 10:21-22; JNM, 7:28-8:9. Rather, Plaintiffs request
 22 judicial notice of the fact US Soccer is the national governing body for soccer in the United States
 23 and AYSO is an affiliate member of US Soccer. Based upon the content of the websites of US
 24 Soccer and AYSO, sources whose accuracy cannot reasonably be questioned, the Court can
 25 judicially notice the fact AYSO is a nationally recognized youth organization which has regular
 26 meeting days Monday through Saturday. Defendants’ feigned ignorance of the relevance of these
 27 websites is unavailing as Defendants acknowledge Plaintiffs’ FAC refers to AYSO, Opposition,
 28 6:20, n. 1; 10:25-26, and Plaintiffs’ FAC refers extensively to AYSO and establishes the relevance

1 of the adjudicative facts. FAC, ¶¶ 107-114; 123-125; and 19:15-19.

2 **E. DEFENDANTS FAIL TO ESTABLISH PLAINTIFFS' CITED**
 3 **AUTHORITIES ARE INAPPOSITE**

4 Defendants' final argument is that case law cited by Plaintiffs is "readily distinguishable,
 5 overstated, and/or inapposite." Opposition, 12:1-2. Defendants first point to Plaintiffs' citation
 6 of *Ins. Co. of N. America v. Hilton Hotels USA*, 908 F.Supp. 809, 813, n. 1 (D.Nev. 1995), but
 7 then fail to explain why this case is distinguishable, overstated, and/or inapposite. Opposition,
 8 13:3-14:7. The same is true for Plaintiffs' citation to *Lee v. City of Los Angeles*, 250 F.3d 668,
 9 689 (9th Cir. 2001) and *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279 (9th Cir. 1986).
 10 Opposition, 14:18-15:14.

11 Defendants next set out the facts of *Citizens for Peace in Space v. City of Colo. Springs*,
 12 477 F.3d 121, 1217 (10th Cir. 2007), cited in Plaintiffs' JNM, at 2:24-26. Opposition, 15:18-25.
 13 Defendants do not dispute that judicial notice of information on the Internet is appropriate, the
 14 proposition for which this case is cited by Plaintiffs. *Id.* at 15:25. Rather, without any reasoning,
 15 Defendants simply state "Plaintiffs' requests, by stark contrast, are inappropriate."
 16 *Id.* at 15:26-16:1.

17 Defendants contend *Denius v. Dunlap*, 330 F.3d 919, 922 (7th Cir. 2003) does not support
 18 Plaintiffs' JNM because Plaintiffs are requesting judicial notice of "*their view*" of the facts, which
 19 facts are "sufficiently alleged in the FAC for purposes of Defendants' Motion to Dismiss."
 20 Opposition, 17:1-2 [emphasis in Opposition]. Defendants do not contend *Denius* fails to provide
 21 authority for taking judicial notice of an official government website, but merely reassert their
 22 "superfluous and unnecessary" argument. *Id.* Plaintiffs direct the Court to section II.B herein in
 23 response to this reassertion.

24 The pin cite provided by Plaintiffs in their citation to *United States v. Chapel*, 41 F.3d,
 25 1338, 1342 (9th Cir. 1994), JNM 3:1, makes clear why the case was cited--judicial notice may be
 26 taken of "adjudicative facts not subject to reasonable dispute" where the source of the information
 27 to be judicially noticed is such that its "accuracy cannot reasonably be questioned," which, in
 28 *Chapel* was the FDIC. Notably, Defendants do not contend that the Washoe County School

1 District, which maintains a website found at www.washoe.k12.nv.us, is *not* a source of
2 information whose accuracy cannot reasonably be questioned. Judicial notice of the documents
3 contained on the Washoe County School District's website, for the purpose of establishing the
4 existence of statements made in those documents (and not for the truth of the statements), is
5 appropriate under Fed.R.Evid. 201.

6 **III. CONCLUSION**

7 Not surprisingly, Defendants' Opposition is more revealing for what it does not argue than
8 for what it does. Defendants do not dispute the authenticity of the documents attached to
9 Plaintiffs' JNM, nor do they contend the sources of those documents can be reasonably disputed.
10 Defendants do not contend that the facts requested to be judicially noticed from those documents
11 are subject to reasonable dispute or that they are incapable of accurate and ready determination by
12 resort to sources whose accuracy cannot reasonably be questioned.

13 Defendants voice their view (or more appropriately, their lawyer voices her view) that
14 Plaintiffs' request to take judicial notice of the emails from Defendant Pilling to Mary Frudden
15 and the June correspondence to and from Defendant Rauh and Mary Frudden are part of
16 Plaintiffs' "hodgepodge," Opposition, 6:20, n.1. However, Defendants' Opposition is completely
17 devoid of any argument or authority which would support a denial of Plaintiffs' JNM with regard
18 to the emails from Defendant Pilling to Plaintiff Mary Frudden for the purpose of establishing the
19 adjudicative fact the Uniform Committee "took action" at least as late as May 10, 2011 or from
20 judicially noticing Mary Frudden's June 6, 2011 and Lynn Rauh's June 28, 2011 response thereto
21 and the envelope in which that response was mailed for the purposes of establishing the
22 adjudicative facts set forth in Plaintiffs' JNM, 6:26-7:24.

23 Defendants had a full opportunity to respond to Plaintiffs' JNM, which Motion is
24 expressly authorized by Fed.R.Evid. 201. Furthermore, Defendants will have the opportunity to
25 argue their position at oral arguments before the Court on January 17, 2012. Thus, their
26 arguments regarding Plaintiffs' "second bite at the apple" are entirely immaterial.


27 Moreover, Defendants' arguments regarding superfluosity and necessity are
28 unconvincing given the conclusiveness given to a fact which has been judicially noticed and are

1 entirely at odds with the purposes underlying Fed.R.Evid. 201.

2 The Court need look no further than the language of Fed.R.Evid. 201 to determine the
3 propriety of taking judicial notice as requested by Plaintiffs in their Motion to Take Judicial
4 Notice. The matters on which Plaintiffs request judicial notice concern facts which would
5 normally go to the jury regarding the parties and their activities. Where, as here, Defendants do
6 not dispute the authenticity of the documents and do not contend the facts are subject to
7 reasonable dispute, requiring Plaintiffs to prove such facts would be a waste of judicial resources.

8 Plaintiffs' JNM satisfies the requirements of Fed.R.Evid. 201 and advances the purposes
9 behind the Rule. Based upon the foregoing and Plaintiffs' JNM, Plaintiffs request the Court to
10 take judicial notice of the matters set forth in their JNM as mandated by Fed.R.Evid. 201.

11 Respectfully submitted this 3rd day of January, 2012.

12
13 By: 
14 MARY FRUDDEN, ESQ.
15 Nevada State Bar No. 3973
16 and JON E. FRUDDEN
17 Pro Se
18 1902 Carter Dr.
19 Reno, NV 89501
20 Telephone: 775-324-7078
21 maryfrudden@sbcglobal.net


22 On Behalf of Themselves and their Minor Children
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered a copy of the foregoing document to Defendants to the following:

MAUPIN, COX & LeGOY
4785 Caughlin Parkway
Reno, NV 89519

Dated this 3rd day of January, 2012.



Mary Frudden